

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

SA MUSIC, LLC and WILLIAM  
KOLBERT, AS TRUSTEE OF THE  
HAROLD ARLEN TRUST,

## Plaintiffs,

V.

AMAZON.COM, INC., AMAZON  
DIGITAL SERVICES LLC,  
VALLEYARM DIGITAL LIMITED,  
LENANDES LTD, GIACOMO VERANI,  
and LIMITLESS INT. RECORDINGS,

## Defendants.

**COMPLAINT FOR  
COPYRIGHT INFRINGEMENT  
JURY DEMAND**

## Basis for Jurisdiction

1. The Court has jurisdiction over the subject matter of this action against Defendants Google LLC, Valleyarm Digital Limited, Lenandes Ltd, Giacomo Verani, and Limitless Int. Recordings pursuant to 28 U.S.C. § 1338(a) because this is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

## Introduction

2. Plaintiffs are the legal and/or beneficial copyright owners of musical works authored by Harold Arlen one of the premier composers of American music.

3. Harold Arlen wrote or co-wrote some of the most popular modern songs, including *Over the Rainbow* from The Wizard of Oz and many other seminal works in the American songbook, including *I've Got the World on a String*, *Stormy Weather*, *The Devil and the Deep Blue Sea*, *Come Rain or Come Shine*, *Get Happy*, *Ill Wind* and *It's Only A Paper Moon*.

4. The Composition Chart annexed as Exhibit A provides a list of Plaintiffs' copyrighted compositions at issue in this case (the "Subject Compositions").

5. The works of Arlen have been recorded by the most prominent jazz and popular artists of all time, including Art Tatum, Art Blakey, Benny Goodman, Billie Holliday, Buddy Rich, Cab Calloway, Charlie Parker, Coleman Hawkins, Count Basie, Dean Martin, Dizzy Gillespie, Duke Ellington, Ella Fitzgerald, Etta James, Frank Sinatra, Fred Astaire, John Coltrane, Judy Garland, Lena Horne, Louis Armstrong, Miles Davis, Quincy Jones, Ray Charles, and Sarah Vaughan to name only a few. These monumental works of art are, quite literally, national treasures.

6. These and other recordings of Plaintiffs' copyrighted musical works have been pirated by the Defendants in this case. Defendants are all players in the digital music business that participate in, and jointly profit from, making digital phonorecord deliveries (*i.e.*, downloads) of pirated recordings of the Subject Compositions.

7. Digital phonorecord deliveries of musical recordings constitute a reproduction and distribution of the musical work embodied in the digital recording and require a license from the copyright owner of the musical composition, sometimes referred to as a “mechanical license.”

8. Defendants have failed to obtain any license that would authorize them to reproduce, distribute, or sell the recordings of the Subject Compositions identified on Exhibit B and, as a result, Defendants have infringed Plaintiffs' exclusive rights of reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§ 106(1) and 106(3).

9. Further, the activity of making digital phonorecord deliveries of pirated recordings of the Subject Compositions does not qualify for a compulsory license or as a covered activity under Section 115 of the Copyright Act.

10. A list of the pirated recordings of the Subject Compositions that Defendants have reproduced and distributed without authorization, including by making digital phonorecord deliveries, thus far identified, is set forth in the Infringement Chart annexed as Exhibit B.

11. All of the recordings identified on Exhibit B are pirated. Plaintiffs have thus far identified over 220 pirated recordings of the Subject Compositions that have been separately reproduced and distributed as digital phonorecord deliveries by Defendants through the Amazon music store as set forth in the Infringement Chart annexed as Exhibit B. Defendants have infringed these works in a concerted and distinct distribution chain.

## **Defendants' Piracy is Massive and Flagrant**

12. The scope and flagrant nature of Defendants' piracy cannot be understated. It is obvious that the recordings listed in Exhibit B are pirated by virtue of the scope of the Limitless catalog, the replication of the original album artwork (while removing the original label logos), and the continued distribution of legitimate versions of the recordings by the rightful record label owners on Amazon.

13. Limitless, which has no web presence and no listing on Discogs.com, is selling recordings by virtually every well-known recording artist from the 1930s through the 1960s, including Frank Sinatra, Ella Fitzgerald, Miles Davis, Louis

1 Armstrong, Billie Holiday, Mel Torme, Ray Charles, Tony Bennett, and Judy  
 2 Garland.

3 14. In addition, strong evidence of the piracy can be gleaned directly from  
 4 Amazon store from the comparison of the bootlegged Limitless catalog entries side-  
 5 by-side with legal recordings being sold by legitimate record labels.

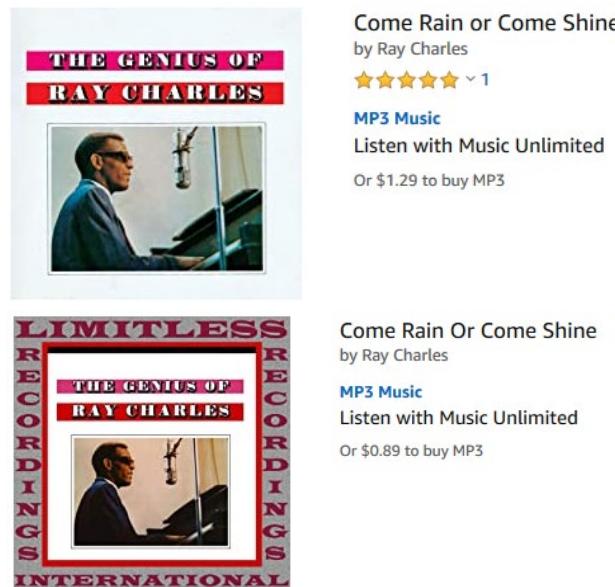
6 15. For example, album cover art has been an essential part of the packaging  
 7 and marketing and labels have taken great care to create album artwork commensurate  
 8 with the music it accompanied. Not so with Limitless, which has often either stolen  
 9 the album art and music wholesale or employed stock artwork for its bootlegged  
 10 albums.

11 16. Invariably, Limitless has simply applied a silver border with its name  
 12 written around the original release artwork and obscuring the original label logo as  
 13 exemplified by the following Amazon screenshots comparing the Limitless release  
 14 with the original:



26 17. In many instances, the Amazon music store is selling the legitimate  
 27 release by the original label side by side with Limitless' bootlegged copy. For

1 example, in 1959, Atlantic Records released *The Genius of Ray Charles*, which  
 2 included his acclaimed version of *Come Rain Or Come Shine*. The album is widely  
 3 hailed and was ranked number 263 on Rolling Stone's Top 500 albums of all time.<sup>1</sup>  
 4 Atlantic is still selling the record but now, it has direct competition from Defendants,  
 5 who have appropriated the recording and the album artwork and are selling their  
 6 bootleg at a 32% discount side by side with the Atlantic original on Amazon:



17 [https://www.amazon.com/s?k=the+genius+of+ray+charles+come+rain+or+come+shine&i=digital-music&ref=nb\\_sb\\_noss](https://www.amazon.com/s?k=the+genius+of+ray+charles+come+rain+or+come+shine&i=digital-music&ref=nb_sb_noss) (11/29/2019)

18. Similarly, in 1957, Capitol Records released the album *Alone*, by Judy  
 19 Garland, which included her recording of the Arlen composition *I Gotta Right To Sing*  
 20 *The Blues*. Capitol sells the recording on the Amazon music store in direct  
 21 competition with Defendants, who sell their pirated copy for a deep discount. In  
 22 addition, Defendants have appropriated album artwork (eliminating the Capitol logo)  
 23 as evidenced by the following the Amazon screenshot:

24

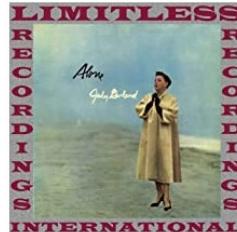
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25

26 <sup>1</sup> "263) The Genius of Ray Charles". Rolling Stone. New York. November 1, 2003. Archived from the  
 27 original on June 15, 2009. Retrieved May 27, 2013.  
[https://web.archive.org/web/20090615041624/http://www.rollingstone.com/news/story/6626052/263\\_the\\_genius\\_of\\_ray\\_Charles](https://web.archive.org/web/20090615041624/http://www.rollingstone.com/news/story/6626052/263_the_genius_of_ray_Charles) (11/29/2019)



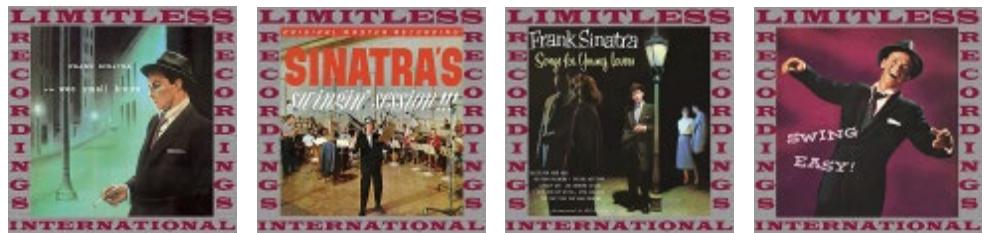
I Gotta Right To Sing The Blues  
by Judy Garland  
**MP3 Music**  
Listen with Music Unlimited  
Or \$1.29 to buy MP3



I Gotta Right To Sing The Blues  
by Judy Garland  
**MP3 Music**  
Listen with Music Unlimited  
Or \$0.89 to buy MP3

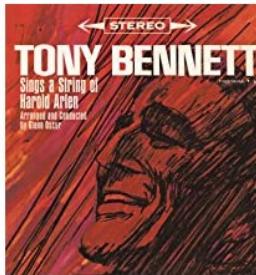
[https://www.amazon.com/s?k=alone+judy+garland+right+to+sing+the+blues&i=digital-music&ref=nb\\_sb\\_noss](https://www.amazon.com/s?k=alone+judy+garland+right+to+sing+the+blues&i=digital-music&ref=nb_sb_noss) (11/29/2019)

19. The Infringement Chart also includes no less than four full albums originally released by Capitol Records containing five Arlen works recorded by Frank Sinatra including *It's Only A Paper Moon*, *Get Happy*, *Last Night When We Were Young*, *Ill Wind*, and his iconic version of *I've Got The World On A String*. Defendants appropriated the album artwork and sold each recording for less than Capitol.<sup>2</sup>



<sup>2</sup> Defendants enhanced their version of the 1954 Capitol album Songs for Young Lovers by adding *I've Got The World On A String*. The song was one of the first recorded by Sinatra for Capitol Records in 1953, but was released as a single and was not part of Songs for Young Lovers.

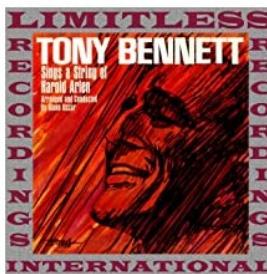
1        20. Defendants have, on occasion, flagrantly bootlegged entire album's  
 2 devoted to Harold Arlen's works. For example, in 1961, Columbia released  
 3 recordings of 12 Arlen works on Tony Bennett Sings a String of Harold Arlen.  
 4 Columbia is still selling the album, including on Amazon for \$9.99. Defendants have  
 5 bootlegged the entire album and are underselling Columbia's legitimate version:



6        Tony Bennett Sings A String Of Harold Arlen  
 7 by Tony Bennett  
 8 13  
 9 **MP3 Music**  
 Listen with Music Unlimited  
 Or \$9.99 to buy MP3  
 10 

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 11 **Audio CD**  
 12 \$9.92  
 13 Get it as soon as Tue, Feb 18  
 14  
 15

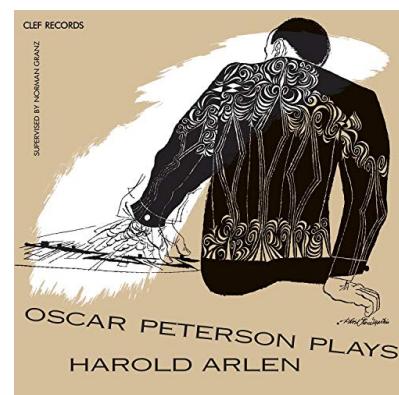
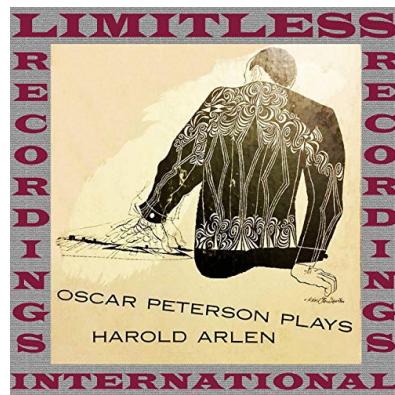


11        Sings A String Of Harold Arlen  
 12 by Tony Bennett  
 13 **MP3 Music**  
 Listen with Music Unlimited  
 Or \$6.99 to buy MP3  
 14 

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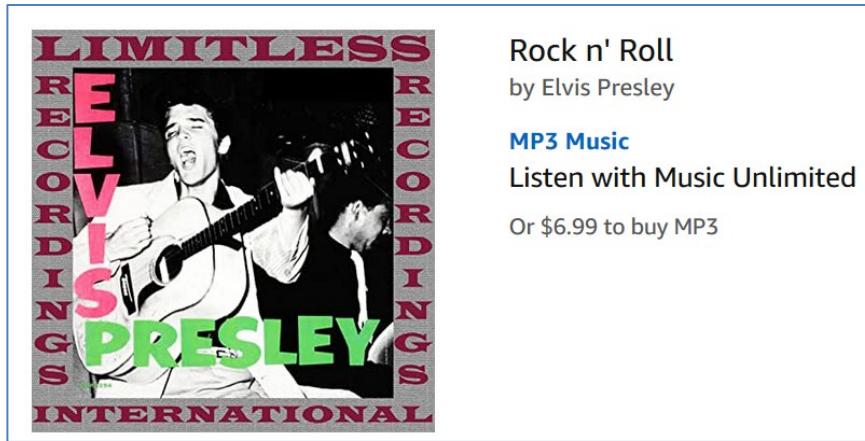
  
 15 **Vinyl**  
 More Buying Choices  
 \$19.99 (1 used offer)

16        21. Similarly, in 1955, Clef Records (now Verve) released a dozen of  
 17 Arlen's works recorded by one of the greatest jazz pianists, Oscar Peterson. Verve is  
 18 still selling the album and individual tracks, including on Amazon. Defendants have  
 19 bootlegged the entire album and are underselling the Verve legitimate version:

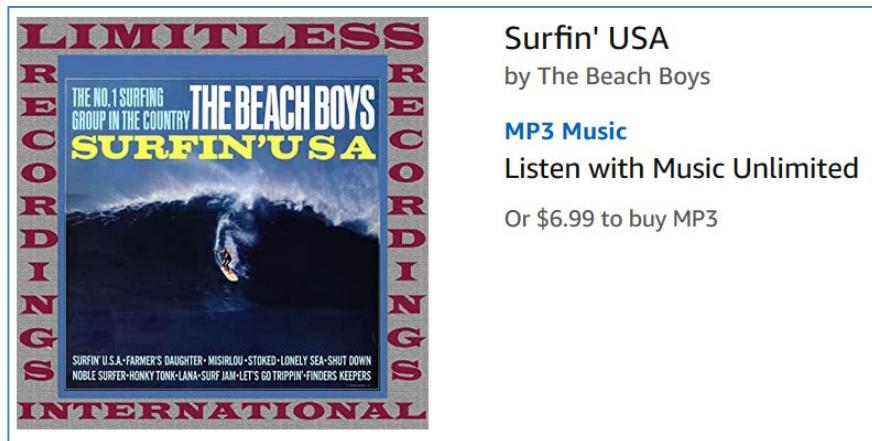


1       22. In addition to the pirated recordings of Plaintiffs' compositions,  
2 Defendants have distributed a broad and deep catalog of thousands of other pirated  
3 recordings through the Amazon store, including many entire albums of seminal  
4 musical works. For example, the Limitless catalog available in the Amazon store  
5 includes the following seminal albums:

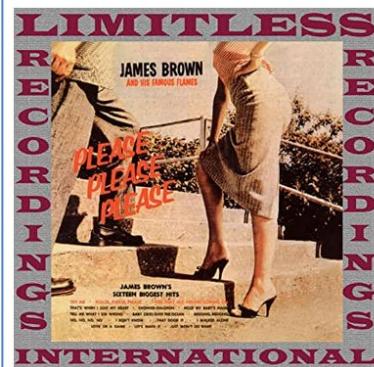
- a. Elvis Presley's debut album, Elvis Presley:



b. Surfin' USA, by The Beach Boys:



c. James Brown's debut album, Please, Please, Please:



Please Please Please  
by James Brown And His Famous Flames

★★★★★ 14

MP3 Music

Listen with Music Unlimited

Or \$6.99 to buy MP3

Audio CD

\$9.99

✓prime Get it as soon as Tue, Dec 24

FREE Shipping on orders over \$25 shipped

by Amazon

d. Bob Dylan's debut studio album, Bob Dylan:



Bob Dylan

by Bob Dylan

★★★★★ 135

MP3 Music

Listen with Music Unlimited

Or \$6.99 to buy MP3

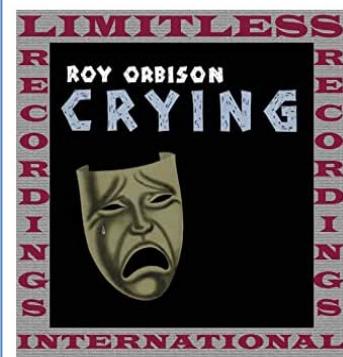
Audio CD

\$4.99

✓prime Get it as soon as Mon, Dec 23

FREE Shipping on orders over \$25 shipped

e. Roy Orbison's Crying:



Crying (Expanded, HQ Remastered Version)  
by Roy Orbison

MP3 Music

Listen with Music Unlimited

Or \$6.99 to buy MP3

23. All of this should have made it obvious that Limitless is operating a huge  
24 music piracy operation. Valleyarm and Amazon chose to ignore the evidence of piracy  
25 and to participate in the infringement on a massive scale.  
26

1       24. To put this case in context, in 2007, Jammie Thomas-Rasset, a single  
 2 mother of four in Brainerd, Minnesota, was found liable, after three separate jury  
 3 trials, for copyright infringement for using file sharing software that enabled the  
 4 unauthorized downloading and distribution of 24 recordings by the Goo Goo Dolls  
 5 and Def Leppard, among others. The juries awarded statutory damages in all three  
 6 trials of up to \$80,000 per infringement. The Eighth Circuit Court of Appeals  
 7 ultimately affirmed statutory damages in the amount of \$9,250 for each infringed  
 8 recording, for a total award of \$222,000. Ms. Thomas-Rasset declared bankruptcy as  
 9 she had “no other option.”

10      25. In 2009, Joel Tenenbaum, a Massachusetts college student, who also  
 11 used file-sharing software that permitted others to download 30 recordings by Limp  
 12 Bizkit and Blink-182, was found liable and the jury awarded statutory damages of  
 13 \$22,500 per recording, for a judgment that totaled \$675,000 forcing Mr. Tenenbaum  
 14 to file for Chapter 7 bankruptcy.

15      26. Unlike Ms. Thomas-Rasset and Mr. Tenenbaum who were not alleged  
 16 to have sold their infringing recordings or profited from their conduct, Defendants in  
 17 this case have engaged in massive music piracy operation for the purpose of  
 18 generating profits from their sales of pirated recordings and by other means.

19      27. The copyright infringement operation detailed in this Complaint is only  
 20 the latest in a long line of piracy schemes that have plagued composers, publishers,  
 21 and record labels since the inception of the music industry over 100 years ago, when  
 22 the perforated rolls used by player pianos to perform musical works were pirated. See  
 23 *Aeolian Co. v. Royal Music Co.*, 196 F. 926 (W.D.N.Y. 1912).

24      28. As the technology employed by the music industry to reproduce musical  
 25 works advanced, bootlegging efforts by music pirates kept pace. In the 1960s and  
 26 1970s, organized criminal enterprises engaged in record and tape piracy operations  
 27 on a scale that is dwarfed by the infringing conduct explained herein. Like the

28

1 Defendants in this case, the “tape pirates” and “record pirates” of years past  
 2 unlawfully duplicated popular pre-existing recordings, and then claimed their liability  
 3 was limited by the compulsory license provision of the 1909 Copyright Act, § 1(e).

4       29. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9<sup>th</sup> Cir.  
 5 1972) settled the issue as to whether tape pirates could limit their liability for piracy  
 6 under the compulsory license provision of the 1909 Copyright Act. In *Duchess*, the  
 7 defendant tape pirate engaged in the same conduct identified in this Complaint, and  
 8 claimed her conduct was lawful because the compulsory license provision of the  
 9 Copyright Act authorized the reproduction and distribution of the musical works  
 10 embodied on the recordings she pirated. The Ninth Circuit rejected the argument,  
 11 stating, “She may not continue her piracy under the flag of compulsory licensing.”  
 12 The *Duchess* court concluded that the tape pirates’ activity was ineligible for a  
 13 compulsory license and that reproduction of a musical composition on a pirated  
 14 recording infringed the copyright in the composition, even when a compulsory license  
 15 was claimed.<sup>3</sup>

16       30. The holding in *Duchess* was codified when the Copyright Act was  
 17 revised in 1976. The statutory bar against compulsory licensing of pirated recordings  
 18 continues in the recent amendments to Section 115 of the Copyright Act, which  
 19 provides that reproduction and distribution of pirated sound recordings is not a  
 20 covered activity under Section 115 and is ineligible for a compulsory license.

21       31. Defendants are nothing more than modern tape pirates and their conduct  
 22 constitutes willful copyright infringement of the Subject Compositions in violation of  
 23

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24       <sup>3</sup> The criminal conduct of “tape pirates” became a priority of the Attorney General of the  
 25 United States, Edward H. Levi, in 1975 when the Justice Department determined that decisions  
 26 reached by four Circuit Courts of Appeals, including the Ninth Circuit in *Duchess*, rendered tape  
 27 pirates criminally liable even where the statutory royalty was tendered. See *Heilman v. Levi*, 391  
 28 F.Supp. 1106 (E.D.Wisc. 1975). Criminal copyright infringement sentences continue to this day.  
 See *Matter of Zaragoza-Vaquero*, 26 I&N Dec. 814 (BIA 2016)(defendant sentenced to 33 months  
 in prison and ordered to be removed from the United States for selling bootleg copies of music  
 CDs at a Florida flea market, as a crime involving moral turpitude).

1 the United States Copyright Act [17 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*] (the  
 2 “Copyright Act”).

3 ***SA Music, LLC***

4 32. Plaintiff SA Music, LLC is a Nevada limited liability company and Sam  
 5 Arlen is the sole member of the company.

6 ***The Harold Arlen Trust***

7 33. Plaintiff William Kolbert is the Trustee of the Harold Arlen Trust (the  
 8 “Harold Arlen Trust”), a trust created by Harold Arlen in his will.

9 ***Amazon***

10 34. Upon information and belief, Defendant Amazon.com, Inc. is a  
 11 corporation organized under the laws of the State of Delaware with a place of business  
 12 at 410 Terry Ave. N Seattle, WA 98109.

13 35. Upon information and belief, Defendant Amazon Digital Services LLC  
 14 is a limited liability company organized under the laws of the State of Delaware with  
 15 a place of business at 410 Terry Avenue N, Seattle, WA 98109. Defendants  
 16 Amazon.com, Inc. and Amazon Digital Services LLC are united in interest and shall  
 17 be referred to, individually and collectively, as “Amazon”.

18 36. Amazon has owned and operated a digital music store under various  
 19 names since 2007, including “Amazon MP3” at launch and currently, “Amazon Music  
 20 Store” or “Digital Music Store” that sells permanent downloads. Amazon currently  
 21 offers a catalog of over 40 million tracks for sale as permanent downloads in the U.S.

22 37. Amazon specifically selected and contracted with Valleyarm and/or  
 23 Limitless to provide the Limitless digital music catalog to be sold through the Amazon  
 24 music store on negotiated financial terms.

25 38. Amazon received all of the recordings of the Subject Compositions  
 26 identified on Exhibit B from Limitless and/or Valleyarm. Amazon then reproduced,  
 27 distributed and sold these pirated recordings of the Subject Compositions through the

1 Amazon music store, without any licenses, as permanent downloads among other  
 2 types of digital phonorecord deliveries identified herein.

3 ***Valleyarm***

4 39. Upon information and belief, Defendant Valleyarm Digital Limited  
 5 (“Valleyarm”) is a business entity organized under the laws of Australia with a place  
 6 of business at Suite 1.09, 838 Collins Street, Docklands, VIC 3008, Australia.

7 40. Valleyarm has distributed, and continues to distribute, digital music to the  
 8 Amazon music store and has delivered thousands of recordings to the Amazon music  
 9 store for sale throughout the U.S.

10 41. Valleyarm specifically selected and contracted with Limitless to provide  
 11 the Limitless digital music catalog to be sold through the Amazon music store on  
 12 negotiated financial terms.

13 42. At Limitless’ direction, Valleyarm unlawfully reproduced all of the  
 14 pirated recordings of the Subject Compositions identified on Exhibit B, distributed  
 15 them to Amazon, and unlawfully authorized Amazon to make digital phonorecord  
 16 deliveries, as specifically set forth in Exhibit B.

17 ***Limitless***

18 43. Upon information and belief, Defendant Lenandes Ltd (“Lenandes”) is a  
 19 company organized under the laws of the United Kingdom with a registered office  
 20 address at 10 Philpot Lane, London, England, EC3M 8AA.

21 44. Upon information and belief, Defendant Giacomo Verani (“Verani”) is  
 22 the sole director and shareholder of Lenandes and controls its operations.

23 45. Upon information and belief, Defendant Limitless Int. Recordings is a  
 24 business entity whose country of origin and business address are unknown to  
 25 Plaintiffs and is controlled by Verani and/or is the trade name under which Verani  
 26 and/or Lenandes are operating. Lenandes, Verani, and Limitless Int. Recordings are  
 27 united in interest and shall be referred to, collectively, as “Limitless”.

28

46. Upon information and belief, Limitless directly pirated pre-existing recordings embodying the Subject Compositions identified on Exhibit B, distributed them to Valleyarm and/or Amazon, unlawfully authorized Valleyarm's distribution and delivery of the pirated recordings to Amazon for sale through the Amazon music store, and unlawfully authorized Valleyarm and Amazon's making of digital phonorecord deliveries in Amazon's music store as specifically set forth in the annexed Exhibit B.

47. Upon information and belief, Limitless is simply duplicating recordings of the Subject Compositions made by others without permission and authorizing Valleyarm and Amazon to sell reproductions of the pirated copies for profit through the Amazon music store.

## **Jurisdiction, Venue and Joinder**

48. This Court has personal jurisdiction over Defendants. Amazon has its principal place of business in Washington and all Defendants have purposefully availed or directed their infringing activities in Washington.

49. Further, Plaintiffs' copyright infringement claims arise out of (a) the reproduction and distribution of pirated recordings of the Subject Compositions listed in Exhibit B, occurring in Washington, directly by Defendants and/or at their purposeful direction and availment, including the sale of pirated recordings of Subject Compositions to Washington residents; or (b) transactions consummated within Washington between Valleyarm and Amazon, concerning reproduction, distribution and delivery of the pirated recordings of the Subject Compositions.

50. Limitless intentionally directed its distributor, Valleyarm, to distribute the pirated recordings to Amazon in Washington for sale through the Amazon music store.

51. Valleyarm and Limitless intentionally distributed and delivered the pirated recordings of the Subject Compositions identified in Exhibit B to Amazon,

1 and unlawfully authorized Amazon to reproduce these pirated recordings of the  
2 Subject Compositions through the Amazon music store and to sell permanent  
3 downloads to Washington consumers.

4       52.   Venue is proper in this District pursuant to 28 U.S.C §§ 1391(b), 1391(c)  
5 and 1400(a) because Amazon has its principal place of business in this state. In  
6 addition, Defendants are subject to personal jurisdiction in this Judicial District and  
7 have committed unlawful acts of infringement in this Judicial District.

8        53.    Joinder of Limitless, Valleyarm and Amazon is proper under Fed. R. Civ.  
9 P. 20 because Defendants are jointly and severally liable as members of a distinct  
10 distribution chain for the acts of copyright infringement identified herein.

## Harold Arlen

12        54. Harold Arlen (1905–1986) was a master composer and a highly regarded  
13 contributor to the Great American Songbook. The son of a synagogue cantor, Arlen  
14 was born in Buffalo, New York and emerged as one of the greatest American  
15 composers and songwriters, writing extraordinarily complex melodies and harmonies  
16 that remained accessible to a broad popular audience.

17        55. Early in his career, Arlen wrote songs for musicals, including the entire  
18 scores for Broadway shows such as *Cotton Club Parade*, *Life Begins at 8:40*, *Bloomer*  
19 *Girl*, *St. Louis Woman*, *Jamaica* and *Saratoga*, among others.

56. Arlen was also active in Hollywood and composed the music for some of the greatest film musicals of all time, most notably all the music in the 1939 motion picture classic “The Wizard of Oz,” including *Ding, Dong! The Witch Is Dead*, *We’re Off To See The Wizard*, and *Over The Rainbow*.

24        57. *Over The Rainbow*, performed by Judy Garland in the film, won the  
25 Academy Award for Best Original Song. The song is one of the most enduring  
26 standards of the 20th century and was voted number one on the "Songs of the Century"  
27 list compiled by the Recording Industry Association of America and the National

1 Endowment for the Arts. The American Film Institute also ranked *Over The Rainbow*  
2 the greatest movie song of all time.

3        58. Arlen successfully collaborated with the greatest Tin Pan Alley lyricists,  
4 including "Yip" Harburg, Ira Gershwin, Johnny Mercer, Leo Robin and Ted Koehler.

5        59. Arlen's partnership with Harburg extended over many decades. With  
6        Billy Rose, they wrote *It's Only A Paper Moon* in 1933. They followed up with a  
7        successful revue, *Life Begins at 8:40*, which included lyric collaborations with his old  
8        friend, Ira Gershwin, including *Fun to Be Fooled*, *You're A Builder Upper*, and *Let's*  
9        *Take A Walk Around The Block*.

10        60. Arlen was inducted into the Songwriters Hall of Fame in 1971 and was  
11 honored with its highest accolade, the Johnny Mercer Award, in 1982. In 1996, Arlen  
12 was honored and memorialized by the U.S. Postal Service with his own stamp:



## SA Music LLC and the Harold Arlen Trust

22        61. Harold Arlen's son, Sam Arlen, acquired the U.S. copyrights in the  
23 Subject Compositions between 1989 and 2015, by termination notices that he, as sole  
24 statutory heir under Section 304 of the Copyright Act of 1976, served and filed with  
25 Copyright Office.

26 62. In 2018, Sam Arlen assigned the U.S. copyrights in the Subject  
27 Compositions, as set forth in the Composition Chart annexed as Exhibit A, along with

1 all accrued causes of action, to his company, SA Music, LLC. SA Music, LLC is the  
2 legal and/or beneficial owner of the U.S. copyright in certain of the Subject  
3 Compositions as identified in Exhibit A, along with all accrued causes of action.

4       63. Plaintiff Harold Arlen Trust acquired the U.S. copyrights identified in  
5 the Composition Chart annexed as Exhibit A by operation of will and through  
6 termination notices served and filed by Harold Arlen during his lifetime with the U.S.  
7 Copyright Office under Section 304 of the Copyright Act of 1976.

8       64. Plaintiff Harold Arlen Trust is the legal owner of certain of the U.S.  
9 copyright in certain of the Subject Compositions as identified in Exhibit A, along with  
10 all accrued causes of action.

## The Subject Compositions

12       65. Plaintiffs are the owners of the musical compositions listed in the  
13 Composition Chart annexed as Exhibit A (collectively, the “Subject Compositions”)  
14 that are the subject of this action.

15        66. The copyrights for all the Subject Compositions have been registered and  
16 renewed with the U.S. Copyright Office, and each Subject Composition is the subject  
17 of a valid U.S. copyright. The Composition Chart annexed as Exhibit A identifies the  
18 copyright registration numbers for each of the Subject Compositions.

19       67. Plaintiffs are the owner of a share in each of the Subject Compositions  
20 in the percentages listed on Exhibit A.

21       68. As discussed more fully below, the Defendants have infringed, and are  
22 continuing to infringe, the copyright in each of the Subject Compositions by willfully  
23 reproducing and distributing them without a license.

## Background

25 69. Before digital music distribution, recorded music was physically  
26 distributed through brick-and-mortar stores that were confined by the limitations of

1 shelf space. Recording artists signed exclusive recording contracts with record labels  
 2 in order to have their records pressed and distributed in national record stores.

3       70. It is hard to imagine that a person walking into Tower Records, off the  
 4 street, with arms full of CDs and vinyl records and claiming to be the record label for  
 5 Frank Sinatra, Louis Armstrong and Ella Fitzgerald, could succeed in having that  
 6 store sell their pirated copies directly next to the same albums released by legendary  
 7 record labels, Capitol, RCA and Columbia, and at a lower price.

8       71. Yet, this exact practice occurs every day in the digital music business,  
 9 where there is unlimited digital shelf space (for example, there are more than 50  
 10 million recordings in the Amazon music store) and a complete willingness by the  
 11 digital music stores to seek popular and iconic recordings from any source, legitimate  
 12 or not, provided they participate in sharing the proceeds.

13       72. The iconic status of the pirated recordings of the Subject Compositions  
 14 at issue in this case cannot be overstated. Any list of the most popular singers and  
 15 musicians of any period between 1930 and 1970 would be replete with the artists who  
 16 have recorded Plaintiffs' musical works, some of them multiple times.

17       73. All the recordings on the Infringement Chart (Exh. B) embodying the  
 18 Subject Compositions are pirated copies, or "bootlegs." Defendants' digital  
 19 phonorecord deliveries of these pirated copies were all made without authorization  
 20 from the copyright owners of the sound recordings or those who originally "fixed"  
 21 them as required by Section 115 (discussed below), and the copyright owners of the  
 22 Subject Compositions.

23       74. Defendants all generate illicit revenue for themselves when these and  
 24 other pirated copies are sold or distributed. Plaintiffs have not authorized any  
 25 reproduction or distribution of these pirate recordings of the Subject Compositions  
 26 (or any identified on Exhibit B) and it is an infringement for which all the Defendants  
 27 are jointly and severally liable.

28

## The Pirated Recordings

75. All of the recordings identified in Exhibit B are pirated. Defendants have taken recordings of the Subject Compositions – in which they hold no rights – and reproduced and distributed pirated copies of them to the public, for profit, without authorization.

76. Virtually all of the recordings at issue in this case were originally made between 1930 and 1972.

77. Since Limitless did not originally “fix” any of the relevant recordings, the only way for it to acquire the rights to duplicate and distribute them would be to purchase or license rights in these recordings.

78. Upon information and belief, Limitless never acquired permission or the rights to reproduce or distribute any of these recordings from any person who lawfully fixed them or from the owner of the copyright in the sound recording. Limitless is simply duplicating previously released recordings and selling them as if they were the rightful owner. Valleyarm and Amazon are duplicating Limitless's pirated sound recordings of the Subject Compositions and selling the pirated copies for profit.

## **Defendants Have Infringed the Subject Compositions**

79. Section 115 of the Copyright Act expressly excludes Defendants' reproduction and distribution of pirated recordings of the Subject Compositions as a covered activity eligible for a compulsory license under Section 115 and Defendants have failed to obtain any licenses for the Subject Compositions that authorize such activity.

80. The Infringement Chart annexed as Exhibit B sets forth (1) each pirated recording of the Subject Compositions within the Limitless, Valleyarm, Amazon distribution chain thus far identified by Plaintiffs that these Defendants have reproduced, distributed, and/or made available for digital phonorecord deliveries through Amazon's digital music store without authorization.

1       81. The various types of unauthorized reproductions, distributions, and/or  
2 digital phonorecord delivery configurations of each of the pirated recordings of the  
3 Subject Compositions made and/or authorized by Defendants are discussed briefly  
4 below.

## *Permanent Downloads*

6        82. Permanent download means a digital transmission of a sound recording  
7 of a musical work in the form of a download, where such sound recording is accessible  
8 for listening without restriction as to the amount of time or number of times it may be  
9 accessed.

10       83. Amazon has made available, reproduced, and distributed permanent  
11 downloads of the recordings of the Subject Compositions listed on Exhibit B to its  
12 customers.

13       84.   Amazon was unlawfully authorized and directed to do so by Limitless  
14 and/or Valleyarm.

15        85. Reproducing or distributing permanent downloads of recordings of the  
16 Subject Compositions require licenses from the copyright owners of the Subject  
17 Compositions and all of the Defendants failed to obtain such licenses for each entry  
18 on the Infringement Chart at Exhibit B.

19       86. The reproduction and distribution of permanent downloads of  
20 recordings of the Subject Compositions by Amazon, and the authorization of this  
21 activity by Limitless and Valleyarm, infringes Plaintiffs' exclusive reproduction and  
22 distribution rights under 17 U.S.C. § 106(1) and (3).

## *Promotional Clips*

24       87. Defendant Amazon has a feature in its online music store that allows  
25 users to interactive stream a sample, promotional clip, of the recordings that are  
26 available for sale as permanent downloads.

88. These promotional clips are 30–90 seconds long and their purpose is to encourage the purchase of the tracks as permanent downloads.

89. Amazon has distributed copies of the recordings of the Subject Compositions identified on Exhibit B as promotional clips in its online music store.

90. These promotional clips of recordings of the Subject Compositions are interactive streams that require a license from the copyright owners of the Subject Compositions and Defendants all failed to obtain such licenses for each entry on the Infringement Chart annexed as Exhibit B.

91. Defendants reproduction and distribution of promotional clips of pirated recordings of the Subject Compositions, and authorization of this activity by the respective Pirate Label and Distributor Defendants, infringes Plaintiffs' exclusive reproduction and distribution rights under 17 U.S.C. § 106(1) and (3).

## *Server Copies*

92. Amazon has reproduced at least one copy of each recording of the Subject Compositions identified on Exhibit B on its servers for sale of permanent downloads through the Amazon music store as server copies.

93. Amazon was unlawfully authorized to engage in this activity by Limitless and/or Valleyarm.

94. Making server copies of any of the recordings embodying the Subject Compositions identified on Exhibit B requires a license from the copyright owners of the Subject Compositions.

95. All Defendants failed to obtain such licenses for each of the recordings embodying the Subject Compositions identified on Exhibit B.

96. Amazon's reproduction of server copies of pirated recordings of the Subject Compositions for sale of permanent downloads through the Amazon music store, and authorization of this activity by Limitless and Valleyarm, as well the distribution of the server copies of pirated recordings of Subject Composition to

1 Amazon, by Limitless and/or Valleyarm, infringes Plaintiffs' exclusive reproduction  
 2 and distribution rights under 17 U.S.C. § 106(1) and (3).

3 ***Making Available***

4 97. Defendants have made and continue to make available, or authorize  
 5 making available, permanent downloads of the recordings of the Subject  
 6 Compositions identified on Exhibit B to the public by delivering, uploading and/or  
 7 offering them as permanent downloads through the Amazon music store.

8 98. The Defendants' making available recordings of the Subject  
 9 Compositions identified on Exhibit B for permanent downloads, and authorization of  
 10 this activity, by Limitless and/or Valleyarm, requires a license from the copyright  
 11 owners of the Subject Compositions

12 99. Defendants failed to obtain such licenses for each recording of the  
 13 Subject Compositions identified on Exhibit B and have thereby infringed Plaintiffs'  
 14 exclusive distribution rights under 17 U.S.C. § 106(3) as a "deemed distribution."  
 15 *A&M Records v. Napster*, 239 F.3d 1004, 1014 (9<sup>th</sup> Cir. 2001); *Perfect 10, Inc. v.*  
 16 *Amazon.com, Inc.*, 487 F.3d 701 718–19 (9<sup>th</sup> Cir. 2007).

17 ***Importation***

18 100. Importation of phonorecords of a musical composition acquired outside  
 19 the U.S. requires authorization of the owner of the copyright of the musical  
 20 composition under Section 602 of the Copyright Act. Importation without the  
 21 authority of the owner of the copyright in that composition is an infringement of the  
 22 exclusive distribution rights under 17 U.S.C. § 106(3).

23 101. Defendants have engaged in the unauthorized importation of  
 24 phonorecords of the Subject Compositions, acquired outside the U.S., by digital  
 25 phonorecord deliveries, or other means.

26 102. Limitless and Valleyarm are located outside the United States.  
 27 Valleyarm, at the direction of Limitless, and Amazon have engaged in the importation

1 of phonorecords of each recording embodying the Subject Compositions listed on  
 2 Exhibit B into the United States by digital phonorecord delivery, or other delivery of  
 3 phonorecords.

4 103. None of the Defendants obtained importation authorization from the U.S.  
 5 copyright owners of the Subject Compositions.

6 104. Defendants' respective importations of phonorecords embodying the  
 7 Subject Compositions identified on Exhibit B infringe Plaintiffs' exclusive  
 8 importation rights under 17 U.S.C. § 602 and distribution rights under 17 U.S.C. §  
 9 106(3).

10 **Willfulness**

11 105. The infringing conduct of all of the Defendants is willful. Limitless  
 12 knows that it does not have authority to reproduce, distribute or for importation of the  
 13 recordings of the Subject Compositions listed on Exhibit B, or to authorize these  
 14 actions by Valleyarm and Amazon. Limitless has pirated thousands of recordings and  
 15 sold them in the United States through the Amazon music store.

16 106. Similarly, Valleyarm did not perform any investigation or due diligence  
 17 to confirm that Limitless had authorization to reproduce, distribute, make, or  
 18 authorize the making of digital phonorecord deliveries, or the importation, of the  
 19 recordings of the Subject Compositions identified on Exhibit B.

20 107. In fact, Valleyarm has had knowledge of the infringing conduct of  
 21 Limitless and has nevertheless continued to make digital phonorecord deliveries and  
 22 other reproductions and distributions of the pirated recordings of the Subject  
 23 Compositions that Limitless provides without licenses, and/or were recklessly  
 24 indifferent or willfully blind to their own infringing conduct.

25 108. Further, Amazon has had knowledge of its own infringing conduct and  
 26 that of Limitless and Valleyarm and has continued to work with them and make digital  
 27 phonorecord deliveries and other reproductions and distributions of the pirated

1 recordings of the Subject Compositions that Limitless and Valleyarm provide and/or  
 2 were recklessly indifferent or willfully blind to their own infringing conduct.

3       109. Amazon has willfully failed to employ adequate human resources,  
 4 screening mechanisms, or use of digital fingerprinting technology to detect  
 5 unlawfully duplicated recordings in their stores that it routinely uses for other  
 6 services, for example, Amazon's "scan and match" service.

7       110. In addition to the recordings identified on Exhibit B, there are believed  
 8 to be many other pirated recordings of the Subject Compositions that Defendants have  
 9 reproduced and distributed without authorization that Plaintiffs have not yet identified  
 10 or that are no longer available on the Amazon music store.

11       111. The infringement by Defendants of each Subject Composition on each  
 12 pirated recording identified in the Infringement Chart at Exhibit B began as of the  
 13 date of upload, receipt, delivery to and/or reproduction by Amazon of server copies  
 14 of the pirated recordings of the Subject Compositions designated for reproduction and  
 15 distribution by Limitless and/or Valleyarm through the Amazon music store and  
 16 continues to the present. The infringements identified in Exhibit B all occurred within  
 17 three years of filing this Complaint.

18       112. By their conduct described above, Defendants have infringed and are  
 19 continuing to infringe Plaintiffs' copyrights on a regular basis in violation of 17  
 20 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

21       113. As a direct and proximate result of Defendants' infringement, Plaintiffs  
 22 are entitled to elect either an award of actual damages, including Defendants' profits,  
 23 or statutory damages under 17 U.S.C. § 504(c).

24       114. Defendants' infringement is and has been willful, intentional, purposeful  
 25 and with willful disregard of the rights of Plaintiffs. Anything less than maximum  
 26 statutory damage awards would encourage infringement, amount to a slap on the  
 27 wrist, and reward Defendants for their willful infringement on a grand scale.

28

1 115. Plaintiffs are also entitled to their costs, including reasonable attorneys'  
2 fees, pursuant to 17 U.S.C. § 505.

3 116. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent  
4 injunction prohibiting Defendants from reproducing, distributing, importing and  
5 selling the pirated recordings of the Subject Compositions without license or  
6 authorization in violation of the Copyright Act.

7 **Claim for Copyright Infringement Against  
8 Amazon, Valleyarm, and Limitless**

9 117. Plaintiffs repeat each and every allegation of the Complaint.

10 118. Plaintiffs SA Music LLC and William Colbert as Trustee of the Harold  
11 Harlen Trust claim that Defendants Amazon, Valleyarm, and Limitless have  
12 unlawfully reproduced, distributed, and imported unauthorized recordings embodying  
13 the Subject Compositions including, but not limited to, the recordings identified in  
14 Exhibit B by the methods identified herein, and/or have unlawfully directed or  
15 authorized this activity.

16 119. Defendants have thereby willfully infringed, and are continuing to  
17 infringe, Plaintiffs' copyrights in the Subject Compositions in violation of the  
18 Copyright Act.

19 **Prayer for Relief**

20 WHEREFORE, Plaintiffs respectfully request that judgment be entered against  
21 Defendants, jointly and severally, as follows:

22 1. A declaration that Defendants have infringed Plaintiffs' copyrights in the  
23 Subject Compositions in violation of the Copyright Act;  
24 2. A declaration that each of Defendants' infringements was willful;  
25 3. At Plaintiffs' election, an award of Plaintiffs' actual damages, including  
26 Defendants' profits, or a separate award of statutory damages in amounts  
27 to be determined by the jury for all infringements involved in the action,

1 with respect to any one work, for which any one infringer is liable  
2 individually, or for which any two or more infringers are liable jointly  
3 and severally;

4 4. A permanent injunction barring the Defendants from continued  
5 infringement of Plaintiffs' copyrights in the Subject Compositions  
6 pursuant to 17 U.S.C. § 502; and  
7 5. Reasonable attorneys' fees and costs of this action, statutory pre-  
8 judgment interest, and such other relief as this Court may deem just and  
9 proper.

10 Dated: New York, New York  
11 January 20, 2020

12 Respectfully submitted,

13 By: s/ Philip P. Mann

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24 *Attorneys for Plaintiffs*

## JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Local Civil Rule 38, and otherwise, Plaintiffs respectfully demand a trial by jury on all issues so triable.

DATED: January 20, 2020

Respectfully submitted,

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